

MONTANA LEGISLATIVE HISTORY

Chapter 83 2001
19

Bill H 223 S

Original bill & history ✓ c

H. Committee on Judiciary

Hearing Date(s) 1/15 ✓ c

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 c

 c

Date Out 1/23 ✓ c

S. Committee on Judiciary

Hearing Date(s) 2/6 ✓ c

2/6 ✓ c

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2/7 ✓ c

Did this bill originate in an interim committee? Yes No

Committee

Report

2001 Montana Legislature

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HOUSE BILL NO. 223

INTRODUCED BY T. SCHMIDT, CYR, GILLAN, HALLIGAN, WANZENRIED



AN ACT REVISING THE LAWS RELATING TO SERVICE OF PROCESS IN CHILD ABUSE AND NEGLECT PROCEEDINGS; CLARIFYING PROVISIONS RELATING TO SERVICE OF PROCESS BY PUBLICATION IN CHILD ABUSE AND NEGLECT PROCEEDINGS; AMENDING SECTIONS 41-3-401, 41-3-403, AND 41-3-608, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Service of process -- service by publication -- effect. (1) Except as provided in subsection (2), service of process under this chapter must be made as provided in the Montana Rules of Civil Procedure.

(2) If a person cannot be served personally, the person may be served by publication as provided in [section 2]. Publication constitutes conclusive evidence of service, and a hearing must then proceed at the time and date set, with or without the appearance of the person served by publication. At or after the hearing, the court may issue an order that will adjudicate the interests of the person served by publication.

(3) If a parent cannot be identified or found prior to the initial hearings allowed by part 4, the court may grant the following relief, pending service by publication on the parent who cannot be identified or found and based upon service of process on only the parent, guardian, or other person having legal custody of the child:

- (a) immediate protection;
- (b) temporary investigative authority; and
- (c) temporary legal custody.

Section 2. Service by publication -- summons -- form. (1) Before service by publication is authorized in a proceeding under this chapter, the department shall file with the court an affidavit stating that, after due diligence, the person cannot be identified or found and stating the diligent efforts made to identify, locate, and serve the person. The affidavit is sufficient evidence of the diligence of any inquiry made by the department. The affidavit may be combined with any other affidavit filed by the department. Upon complying with this subsection, the department may obtain an order for the service to be made upon the party by publication. The order may be issued by either the judge or the clerk of the court.

(2) Service by publication must be made by publishing notice three times, once each week for 3 successive weeks:

(a) in a newspaper in a community in which the publication can reasonably be calculated to be seen by the person, based upon the last-known address or whereabouts, if known, of the person, whether inside or outside this state; or

(b) if the identity or location of the person is unknown, in a newspaper in the county in which the action is pending, if a newspaper is published in the county, and, if a newspaper is not published in the county, in a newspaper published in an adjoining county and having a general circulation in the county.

(3) Service by publication is complete on the date of the last publication required by subsection (2).

(4) A summons required under this chapter must:

(a) be directed to the parent, legal guardian, other person having legal custody of the child, or any other person who is required to be served; and

(b) be signed by the clerk of court, be under the seal of the court, and contain:

(i) the name of the court and the cause number;

(ii) the initials of the child who is the subject of the proceedings;

(iii) the name of the child's parents, if known;

(iv) the time within which an interested person shall appear;

(v) the department's address;

(vi) a statement in general terms of the nature of the proceedings, including the date and place of birth of the child, the date and place of the hearing, and the phone number of the clerk of the court in which the hearing is scheduled; and

(vii) notification apprising the person served by publication that failure to appear at the hearing will constitute a denial of interest in the child, which denial may result, without further notice of this proceeding or any subsequent proceeding, in judgment by default being entered for the relief requested in the petition.

Section 3. Putative fathers -- service by publication -- continuation of proceedings. (1)

Reasonable efforts must be made to resolve issues of paternity, if any, as early as possible in proceedings under this chapter. The department shall make every reasonable effort to obtain service of process of a petition on a putative father, as defined in 42-2-201.

(2) If a putative father cannot be served personally, the putative father may be served by publication as provided in [sections 1 and 2].

(3) Regardless of the provisions of subsections (1) and (2), if a putative father cannot be identified or found prior to the initial hearings allowed by part 4, the court may grant the following relief, pending service by publication on the putative father and based upon service of process on only the parent, guardian, or other person having legal custody of the child:

- (a) immediate protection;
- (b) temporary investigative authority; and
- (c) temporary legal custody.

(4) Throughout the proceedings, the court, in its discretion, may order the department to continue to attempt to identify, locate, and serve a putative father.

(5) A court may order termination of the parental rights of a putative father under this chapter based on service by publication if the provisions of [sections 1 and 2] have been met.

Section 4. Section 41-3-401, MCA, is amended to read:

"41-3-401. Abuse and neglect petitions. (1) The county attorney, attorney general, or an attorney hired by the county is responsible for filing all petitions under this chapter. The petition must be accompanied by an affidavit by the department alleging that the child appears to have been abused, neglected, or abandoned and stating the basis for the allegation.

(2) Upon receipt of a petition, except a petition for temporary investigative authority, the court shall set a date for an adjudicatory hearing on the petition. The petitions must be given preference by the court in setting hearing dates.

(3) A petition alleging abuse or neglect is a civil action brought in the name of the state of Montana. The Montana Rules of Civil Procedure apply except as modified in this part. Proceedings under a petition are not a bar to criminal prosecution.

(4) The parents or parent, guardian, or other person or agency having legal custody of the youth named in the petition, if residing in the state, must be served personally with a copy of the petition and summons at least 5 working days before the date set for hearing. If the person or agency cannot be served personally, the person or agency may be served by publication ~~in the manner provided by the Montana Rules of Civil Procedure for other types of proceedings~~ as provided in [sections 1 and 2].

(5) If personal service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall appoint an attorney to represent the unavailable party when

in the opinion of the court the interests of justice require.

(6) If a parent of the child is a minor, notice must be given to the minor parent's parents or guardian, and if there is no guardian, the court shall appoint one.

(7) Any person interested in any cause under this chapter has the right to appear. Any foster parent, preadoptive parent, or relative caring for the child must be given legal notice by the attorney filing the petition of all judicial hearings for the child and must be given an opportunity to be heard. The right to appear or to be heard does not make that person a party to the action. Any foster parent, preadoptive parent, or relative caring for the child must be given notice of all reviews by the reviewing body.

(8) Except when the proceeding is instituted or commenced at the request of the department, a citation must be issued and served upon a representative of the department before the court hearing.

(9) The petition must:

(a) state the nature of the alleged abuse or neglect;

(b) state the full name, age, and address of the youth and the name and address of the youth's parents or guardian or person having legal custody of the youth;

(c) state the names, addresses, and relationship to the youth of all persons who are necessary parties to the action.

(10) The petition may ask for the following relief:

(a) temporary investigative authority and protective services, as provided in 41-3-402;

(b) temporary legal custody, as provided in 41-3-406;

(c) appointment of a guardian pursuant to 41-3-421;

(d) termination of the parent-child legal relationship and either:

(i) permanent legal custody with the right to consent to adoption, as provided in 41-3-607; or

(ii) appointment of a guardian; or

(e) any combination of the provisions of subsections (10)(a) through (10)(d) or any other relief that may be required for the best interests of the child.

(11) A request for a determination that reunification services need not be provided pursuant to 41-3-403 may be made in conjunction with the filing of a petition requesting relief, as provided for in subsection (10) of this section.

(12) The petition may be modified for different relief at any time within the discretion of the court.

(13) The court may at any time on its own motion or the motion of any party appoint counsel for any indigent party."

Section 5. Section 41-3-403, MCA, is amended to read:

"41-3-403. Order for immediate protection of youth. (1) (a) Upon the filing of a petition for temporary investigative authority and protective services, the court, after consideration of the parents' statements, if any, included with the petition and any accompanying affidavit or report to the court, may issue an order granting relief that may be required for the immediate protection of the youth.

(b) The order, along with the petition and supporting documents, must be served ~~pursuant to the Montana Rules of Civil Procedure~~ on the person or persons named in the order as provided in [sections 1 and 2]. When the youth is placed in a medical facility or protective facility, the department shall notify the parents or parent, guardian, or other person having legal custody of the youth, at the time the placement is made or as soon after placement as possible.

(c) The order must require the person served to comply immediately with the terms of the order and to appear before the court issuing the order on the date specified for a show cause hearing. The show cause hearing must be conducted within 20 days of the issuance of the order by the judge or a master appointed by the judge. The person filing the petition has the burden of presenting evidence establishing probable cause for the issuance of the order. At the show cause hearing, the court shall provide an opportunity for a parent or guardian, if present, and any other person having relevant knowledge to provide relevant testimony. The court may consider all relevant evidence in accordance with the rules of civil procedure as modified by this part, but may in its discretion limit testimony and evidence to only that which is relevant to the issues of removal from the home and the child's need for continued protection. The court may amend the order. Except as otherwise provided in this part, the rules of civil procedure apply. Hearsay evidence of statements made by the affected youth is admissible at the hearing or at a contested case proceeding held pursuant to Title 2, chapter 4, part 6, that results from adverse licensing action taken by the department.

(d) If the child is not returned home after the show cause hearing, the person served may request that a local citizen review board, if available pursuant to part 10, review the case within 30 days of the show cause hearing and make a recommendation to the district court, as provided in 41-3-1010.

(e) Upon a failure to comply or show cause, the court may hold the person in contempt or place temporary physical custody of the youth with the department until further order.

(2) At the conclusion of a show cause hearing, in an order granting or denying relief, the court shall make a finding regarding the reasonableness of agency efforts to prevent the child's removal from the home or to make it possible to safely return the child to the child's home. In determining preservation or reunification services to be provided and in making reasonable efforts at providing preservation or reunification services, the child's health and safety are of paramount concern. Reasonable efforts to provide preservation or reunification services are not required if the court finds that the parent has:

(a) subjected a child to aggravated circumstances, including but not limited to abandonment, torture, chronic abuse, or sexual abuse or chronic, severe neglect of a child;

(b) committed, aided, abetted, attempted, conspired, or solicited deliberate or mitigated deliberate homicide of a child;

(c) committed aggravated assault against a child;

(d) committed neglect of a child that resulted in serious bodily injury or death; or

(c) had parental rights to the child's sibling or other child of the parent involuntarily terminated and the circumstances related to the termination of parental rights are relevant to the parent's ability to adequately care for the child at issue.

(3) Preservation or reunification services are not required for a putative father, as defined in 42-2-201, if the court makes a finding that the putative father has failed to do any of the following:

(a) contribute to the support of the child for an aggregate period of 1 year, although able to do so;

(b) establish a substantial relationship with the child. A substantial relationship is demonstrated by:

(i) visiting the child at least monthly when physically and financially able to do so; or

(ii) having regular contact with the child or with the person or agency having the care and custody of the child when physically and financially able to do so; and

(iii) manifesting an ability and willingness to assume legal and physical custody of the child if the child was not in the physical custody of the other parent.

(c) register with the putative father registry pursuant to Title 42, chapter 2, part 2, and the person has not been:

(i) adjudicated in Montana to be the father of the child for the purposes of child support; and

(ii) recorded on the child's birth certificate as the child's father.

(4) If the court finds that preservation or reunification services are not necessary pursuant to subsection (2), a permanency hearing must be held within 30 days of that determination and reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

(5) If reasonable efforts have been made to prevent removal of a child from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be inconsistent with the permanency plan for the child, the department shall make reasonable efforts to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child. Reasonable efforts to place a child permanently for adoption or to make an alternative out-of-home permanent placement may be made concurrently with reasonable efforts to return a child to the child's home.

(6) The court may grant the following kinds of relief:

(a) right of entry by a peace officer or department worker;

(b) medical and psychological evaluation of the youth or parents, guardians, or person having physical or legal custody;

(c) requirement that the youth, parents, guardians, or person having physical or legal custody receive counseling services;

- (d) placement of the youth in a temporary medical facility or a facility for protection of the youth;
 - (e) requirement that the parents, guardian, or other person having physical or legal custody furnish information that the court may designate, including the name and address of a putative father, as defined in 42-2-201, for the purpose of obtaining service of process in the proceeding;
 - (f) inquiry into the financial ability of the parents, guardian, or other person having custody of the youth to contribute to the costs for the care, custody, and treatment of the youth and requirement of a contribution for those costs pursuant to the requirements of 41-3-411; or
 - (g) other temporary disposition that may be required in the best interests of the youth that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined.
- (7) An order for temporary investigative authority and protective services may not be issued for a period longer than 90 days following the show cause hearing and must be limited to one extension of 90 days. Before the expiration of the time provided for in an order for temporary investigative authority and protective services, the county attorney, the attorney general, or an attorney hired by the county shall file a petition for one of the following:
- (a) limited emancipation;
 - (b) temporary legal custody;
 - (c) termination of the parent-child legal relationship and permanent legal custody with the right to consent to adoption; or
 - (d) dismissal.
- (8) Notwithstanding the above time limits, the court may continue an order for temporary investigative authority pending a hearing on a petition provided for in subsection (7).
- (9) If the time limitations of this section are not met, the court shall review the reasons for the failure and order an appropriate remedy that considers the best interests of the child."

Section 6. Section 41-3-608, MCA, is amended to read:

"41-3-608. Notice. Before a termination of the parent-child legal relationship based on abandonment may be ordered, the court shall determine whether the ~~rules of civil procedure~~ provisions of [sections 1 and 2] relating to service of process on the parents have been followed. ~~If the parents were not served personally, the petitioner must file an affidavit stating what efforts have been made to locate the parent or parents of the child. The affidavit must be filed at least 10 days prior to the hearing.~~"

Section 7. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 41, chapter 3, part 4, and the provisions of Title 41, chapter 3, apply to [sections 1 through

3].

Section 8. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 9. Effective date. [This act] is effective on passage and approval.

- END -

Latest Version of HB 223 (*HB0223.ENR*)
Processed for the Web on March 9, 2001 (11:42AM)

New language in a bill appears underlined, deleted material appears stricken.

Sponsor names are handwritten on introduced bills, hence do not appear on the bill until it is reprinted.
See the status of this bill for the bill's primary sponsor.

Status of this Bill | 2001 Legislature | Leg. Branch Home
This bill in WP 5.1 | All versions of all bills in WP 5.1
Authorized print version w/line numbers (PDF format)

Prepared by Montana Legislative Services

(406)444-3064

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on February 6,
2001 at 9:05 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Walter McNutt (R)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)

Members Excused: None.

Members Absent: None.

Staff Present: Anne Felstet, Committee Secretary
Valencia Lane, Legislative Branch

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 223, 1/31/2001
Executive Action: SB 242, SB 293, SB 337, SB 342

HEARING ON HB 223

Sponsor: REP. TRUDI SCHMIDT, HD 42, GREAT FALLS

Proponents: Thomas Olson, representing self
Ann Gilkey, Court Assessment Program

Opponents: None

Opening Statement by Sponsor:

REP. TRUDI SCHMIDT, HD 42, GREAT FALLS, opened on HB 223, which codified the current practice of publication of child abuse and neglect cases on persons who could not be found or identified for personal service. The bill changed the current process by requiring publication where the subject could see it. Currently, the information was published where the case was pending, even if they knew the parent wouldn't see it because the parent lived somewhere else. She said House amendments further clarified the bill to make it even better.

Proponents' Testimony:

Thomas Olson, representing self, said he was a retired District Judge who helped get this bill started. He listed a few reasons for the bill. 1) To serve missing parents, the Rules of Civil Procedure had to be followed in publishing a summons. The Rules did not authorize these cases to be published. It was a conflict in the law resolved by HB 223. 2) The major problem in publishing a summons, the County Attorney and the Judge did not really know what should be included in the summons. HB 223 provided a checklist for the summons's content. 3) Serving someone whose parental rights were to be terminated was hopelessly incomplete. The law said the only public person that could be published on was someone accused of abandonment. It was too narrow. HB 223 also addressed that issue.

Ann Gilkey, Court Assessment Program, said she worked in this area for many years and the problems addressed by HB 223 were statewide for judges, county attorneys, and attorneys working in this field. The House amendments helped clarify the bill and addressed concerns raised. She noted another concern in the House Judiciary was the procedure of Service of Process on absent parents. She said current practice, without the bill, was to publish where the action took place, even if the person was suspected to be outside the area. HB 223 was a genuine attempt to find the absent parent and was a vast improvement over current practice.

Opponents' Testimony:

None

Questions from Committee Members and Responses:

SEN. DUANE GRIMES asked for clarification: if paternity was unclear, how was publication done. He was thinking of cases where a father was named publicly, but circumstances indicated that another could also be the father. **Ann Gilkey, Court Assessment Program**, replied a punitive father was someone who might be the father, but he wasn't listed on the birth certificate, and wasn't necessarily coming forward. In some cases there was more than one punitive father. Everyone's parental rights were considered, whether they were the biological or punitive father. An attempt was made to find the people and last resort was publication in a newspaper. Currently, the Rules of Civil Procedure, which didn't clearly allow Service by Publication for abuse and neglect cases, was used to Serve where the action was pending. First response would be to Serve the last known address.

SEN. GRIMES wanted to know what other cases were Served by Publication. **Ms. Gilkey** said probate, divorce, other civil cases used that method.

SEN. GRIMES asked if this bill set a precedent. **Ms. Gilkey** said no. It clarified a confusing, existing law and practice. It made it useful and more fair to the people who would be Served this way.

SEN. JERRY O'NEIL announced he did a survey of the Clerks of Court in Montana. One of the questions asked, "in a divorce case where one parent was missing, did publication need to be made in the county where the petition was filed, or in the locality of the last known address." He reported there was no clear consensus. He said it was the same response for other family law cases in Montana. He asked if those cases should be addressed now and asked Judge Olson to sit on a committee to work on it so all family law cases were handled in an understandable manner. **Thomas Olson, representing self**, responded he was retired, but would be willing to sit on such a committee. However, he did not want to address all the issues in this particular bill.

SEN. O'NEIL asked if those inclusions could be made in one committee meeting in the next week. **Mr. Olson** said he would be willing to look at the issue.

SEN. MIKE HALLIGAN stated concern about the publication as stated on page 2. Did the bill specify the Service would go to the last

known address and publish where the parent might be? It required two publications? **Mr. Olson** believed that subclause 2a narrowed it down to publication in the area where the missing parent could possibly see it.

SEN. HALLIGAN then asked if an affidavit was prepared, sent to the last known address, but returned and information gave a new location, then would it be possible to only publish at this new location and not also the last known address. **Mr. Olson** said yes that was the preferable place to publish.

SEN. HALLIGAN referred to page 1, asking the time line of termination. **Ms. Gilkey** said the concern was not to proceed with termination of parental rights until the publication was given. That took time, so initial hearings were allowed. She suggested caution so that the amendment did not tie the court's hands. She also commented on his question regarding where to publish. She read it to say it would be published both places and suggested the word "or".

SEN. HALLIGAN assumed if grandparents were available, then the child should not go straight into a guardianship because those laws were being amended. He questioned that under a T.I.A. the child could be placed with the grandparents. He was guarding against excluding a petition that could be used as a temporary avenue. He didn't want it limited to three. **Ms. Gilkey** said it did limit it, but it was pending the publication. Following publication, other things could be done. She didn't think it was too narrow.

CHAIRMAN LORENTS GROSFIELD referred to page 1, section 2, sub 1. He said the department was required to do due diligence and have an affidavit, but further down, the affidavit was sufficient evidence of the diligence. He thought that language was not defined enough. **Ms. Gilkey** said the House amendment was based on similar concerns. The amendment attempted to say even though an affidavit was sworn testimony under oath, the judge had the ability to say it wasn't enough. It didn't force the judge to accept it. She acknowledged that Judge Olson was in agreement. She said the due diligence on the affidavit was enough so the person didn't have to come in and testify.

CHAIRMAN GROSFIELD asked Judge Olson to respond as well. If the affidavit looked cursory, how would that work? **Mr. Olson** said section 2 attempted to get away from the practice of having to take a newly issued summons to the sheriff when it was known the missing parent was not in the county. He said that was a waste of time and taxpayer money. Therefore, the onus was on the department to tell the court what had been done. He agreed that

if the affidavit looked insufficient, then the judge could turn it back to the department for further information.

CHAIRMAN GROSFIELD clarified that this would be the process used by judges across the state. **Mr. Olson** said he was comfortable that that would be the procedure.

SEN. HALLIGAN clarified the existing Rules of Civil Procedure used the due diligence language and the courts were used to that. He noted that judges checked and balanced the original affidavit in accord with due diligence, and once in court, they asked again.

Closing by Sponsor:

REP. SCHMIDT closed on HB 223, requesting the bill stay as it was and not include other family law issues because it took considerable time and talent. She said the bill added another layer of finding a parent in the department's child abuse and neglect cases. She felt the amendments were good. She noted if it passed, **SEN. HALLIGAN** had agreed to carry it.

EXECUTIVE ACTION ON SB 337

Motion: **SEN. GRIMES** moved **AMENDMENTS SB033701, EXHIBIT(jus30a01)**.

Discussion:

SEN. DUANE GRIMES said the amendments made sure there wasn't a conflict in the code and said **Valencia** could explain.

{Tape : 1; Side : B}

Valencia Lane, Legislative Staffer, said amendments were made to Title 25, small claims courts. Following the original draft they realized Title 3, the general sections relating to courts, had similar provisions. To make the bill complete it should have included those sections as well. The committee still had a policy decision to determine if they wanted to pass the bill or not.

Vote: Motion to adopt amendments SB033701 carried unanimously.

Motion: **SEN. GRIMES** moved that **SB 377 DO PASS AS AMENDED**.

Discussion:

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on February 7,
2001 at 9:05 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Walter McNutt (R)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Cecile Tropila, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Executive Action: HB 223, HB 191
Discussion: HB 184, HB 195

EXECUTIVE ACTION ON HB 223

Motion: **SEN. DUANE GRIMES** moved **HB 223 BE AMENDED**. Amendments
were handed out **EXHIBIT(jus31a01)**.

Discussion:

SEN. DUANE GRIMES said the first amendment permits having to send
addresses to two or three places.

SEN. MIKE HALLIGAN said they would not be allowed to go in and
take the child in an emergency situation.

Valencia Lane, Legislative Staffer, stated amendments one and three are the same amendments in two different places. She explained the amendments and language changes.

Chuck Hunter, Department of Public Health, said this section with the amendments allowed a judge to order certain types of reliefs, as it appears in the amendment. He felt the language of "emergency protection" should be taken out, the emergency protection is being done currently when a child is in immediate need to be released from the parents. **SEN. HALLIGAN** felt Subsection (A) should be taken out.

Valencia Lane felt confused because she thought after "immediate protection" they would take out "emergency protection services".

SEN. GRIMES asked if one of the intents of this bill was to effect when a notice is to be given in an emergency. He thought it would be difficult to go in and release a child in an emergency situation without notice.

Chuck Hunter said under the current emergency statute they can go in without a judge's order if there is risk to the child. He added there was immediate protection of the child and as the form of this amendment is now it would add confusion with the clarity of emergency protection.

SEN. GRIMES asked if this bill was intended to affect the emergency protection services. **Chuck Hunter** said he didn't believe that was the intent of the bill, but to work with the due process issue of the statutes when there was petitions and when there was action and how to notice the parties involved.

Substitute Motion: **SEN. HALLIGAN** motioned to add provisions and strike language page one, line 22 and page three line 11.

Discussion: None

Vote: Substitute Motion carried unanimously.

Motion: **SEN. HALLIGAN** moved HB 223 DO CONCUR.

Discussion:

SEN. HALLIGAN said the idea of publication was still required under a personal service and once the petition was served a new notice would be sent out. He said there is added protections for this bill.

Vote: Motion carried unanimously.

Discussion on HB 184 from floor debate:

SEN. GRIMES said there needed to be trust with the department and the department should explain some of the concerns from this bill.

SEN. JERRY O'NEIL wondered if the fingerprinting was being put into the system when people were not being convicted.

SEN. WALT MCNUTT wanted to know if someone was not convicted if it would stay in the system or be removed. **Brenda Nordlund, Motor Vehicle Division**, said once the fingerprinting was done it stays in the central repository, but the birth and death of the offense goes through the system and stays until it is dismissed because it will be tracked on the criminal record system.

SEN. HALLIGAN asked if a person was driving under the influence, where do the fingerprints go after they are taken. **Brenda Nordlund** said under the current law those fingerprints go nowhere, they stay at the local level. She explained fingerprints could not be submitted to the central repository for identification purposes under the current Criminal Justice Information Act.

SEN. HALLIGAN asked if it was considered a traffic offense. **Brenda Nordlund** answered yes.

SEN. HALLIGAN asked if this needs to be more than a traffic offense. **Brenda Nordlund** said there was strong public policy to support this.

SEN. HALLIGAN asked if this bill would allow the fingerprints to be sent to Helena. **Brenda Nordlund** said if this bill was passed, that would be correct.

SEN. HALLIGAN asked how would the court know to transmit if there was a dismissal or an acquittal. **Brenda Nordlund** said during the regular course of business courts report both to the Criminal History Record System and dispositions to the Motor Vehicle Division. She added a person could petition to have something removed from their record.

SEN. HALLIGAN asked if an employer requested records, would the Motor Vehicle Division have to notify the person asking for this request and he asked if there was an expungement if a person petitions to have them expunged. **Brenda Nordlund** said no, that

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN JIM SHOCKLEY**, on January 15, 2001 at 8:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Jim Shockley, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. Darrel Adams (R)
Rep. Gilda Clancy (R)
Rep. Aubyn A. Curtiss (R)
Rep. Bill Eggers (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Linda Holden (R)
Rep. Joan Hurdle (D)
Rep. Jeff Mangan (D)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. Ken Peterson (R)
Rep. Diane Rice (R)
Rep. Bill Thomas (R)
Rep. Merlin Wolery (R)
Rep. Cindy Younkin (R)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Mary Lou Schmitz, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: **HB 106 - 1-11-01**
HB 174 - 1-11-01

HB 187 - 1-11-01

HB 189 - 1-11-01

HB 223 - 1-11-01

Executive Action: HB 214 - DO PASS

HB 184 - DO PASS

HB 187 - TABLE

HB 106 - TABLE

HB 68 - TABLE

HEARING ON HB 187

Sponsor: Rep. Jeff Mangan said he introduced this Bill last session and based on the testimony, he was not happy with it but he wanted to introduce it again. At this point, he is still struggling with this Bill and at executive action or any time he will move to Table the Bill until he can feel comfortable enough to work with amendments.

EXECUTIVE ACTION ON HB 187

Motion/Vote: REP. MANGAN moved that HB 187 BE TABLED. #1 Motion carried unanimously 19-0.

HEARING ON HB 106

Sponsor: Rep. Jeff Mangan, HD 45, Great Falls said this Bill is an Act increasing the penalty for a person distributing or manufacturing a dangerous drug at a place where day care for children is provided.

{Tape : 1; Side : A; Approx. Time Counter : 0 - 4.4}

Proponents: Rep. Gary Matthews, HD 4, Miles City said his community has been involved in two high-profiled drug cases in the last three months. The first one was a high school senior who lost her life because of a drug overdose and the second was a day-care facility. The owner of the facility was arrested for selling drugs out of her place of business. The people in his community were outraged.

Opponents: Scott Crichton, Executive Director, American Civil Liberties Union of Montana. He wanted it noted he is not sympathetic to people who are dealing drugs out of day care centers in Miles City. He said existing law makes it quite possible to prosecute and apprehend these people. They face substantial sentences depending on their criminal record and

Closing by Sponsor: Rep. Jent closed the Hearing on HB 174.

HEARING ON HB 223

Sponsor: Rep. Trudi Schmidt, HD 42, Great Falls said the Bill is drafted for an Act revising the laws relating to service of process in child abuse and neglect proceedings; clarifying provisions relating to service of process by publication in child abuse and neglect proceedings. This Bill came as a result of her sitting on the State Family Service Advisory Council.

Proponents: Thomas A. Olson, retired District Judge, Bozeman said his most serious concern is that the statutes on service of parents in abuse and neglect cases are a disaster in the Montana Code. They are inconsistent and inadequate, and sometimes nonexistent, in his opinion. Basically, it addresses a major concern, that is, some of the statutes say notices should be published to the missing father, or non-custodial parent and Montana Civil procedure rules should be used, which is like a legal boxed canyon, so this Bill is designed to permit publication upon non-custodial parents.

Sen. Mike Halligan, Missoula spoke on technical aspects of the Bill.

Ann Gilkey, Court Assessment Program

Opponents: None

Informational Witnesses: Mary Phipper, Montana Association of Clerks of District Courts.

Chuck Hunter, Administrator, Child and Family Services Division

Questions from Committee Members and Responses: Reps. Mangan, Gutsche, Peterson, Laszloffy, Noennig, Shockley, Newman, Holden, Wolery, Eggers, Clark to Ms. Gilkey, Judge Olson and Mr. Hunter concerning procedural measures. Judge Olson said this is a long process. The first step is the allegation of abuse, the filing of some sort of a petition charging abuse, then the adjudication, or the trial, on that petition as to whether the abuse happened. All of this is outside the presence of the missing parent so they are dealing with the parent that is on hand and who is alleged to have abused or neglected the child. Following the trial on the abuse, comes the disposition hearing and that is: what do we need

to do with this parent here before us to make them a better parent; what kind of treatment plan, what kind of rehabilitation. During the whole process they are still gathering information on where that missing parent is. They do not want to hold the process up for publication notices.

{Tape : 2; Side : B; Approx. Time Counter : 3.5 - 29.3}

{Tape : 3; Side : A; Approx. Time Counter : 0.1 - 11.8}

{Tape : 3; Side : A; Approx. Time Counter : 11.8 - 29}

{Tape : 3; Side : B; Approx. Time Counter : 0.1 - 6.3}

Closing by Sponsor: Rep. Schmidt closed the Hearing on HB 223

EXECUTIVE ACTION ON HB 191

Motion: REP. GALLUS moved that HB 191 DO PASS. #9

Motion: REP. MANGAN moved that HB 191 BE AMENDED. #10

Discussion: Reps. Gallus, Younkin, Peterson, Noennig.

Vote: Mangan amendments failed 3-15.

Motion: Rep. Wolery moved an amendment which Mr. MacMaster said is already on the books. #11

Discussion: Reps. Noennig, Gallus, Hurdle, Mr. MacMaster, Newman, Harris, Peterson.

{Tape : 3; Side : B; Approx. Time Counter : 6.3 - 19.4}

Motion: Rep. Noennig moved to postpone HB 191.

EXECUTIVE ACTION ON HB 184

Motion: REP. GALLUS moved that HB 184 DO PASS. #13

Discussion: Reps. Younkin, Gallus, Clancy, Laszloffy, Newman.

Motion/Vote: REP. GALLUS moved that HB 184 BE AMENDED. #14.

Motion failed 7-12 with Reps. Shockley, Laszloffy, Clark, Clancy, Curtiss, Eggers, Harris, Holden, Noennig, Rice, Thomas and Wolery voting no.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON JUDICIARY

Call to Order: By **VICE CHAIRMAN PAUL CLARK**, on January 23, 2001
at 8:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. Darrel Adams (R)
Rep. Gilda Clancy (R)
Rep. Aubyn A. Curtiss (R)
Rep. Bill Eggers (D)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Linda Holden (R)
Rep. Joan Hurdle (D)
Rep. Jeff Mangan (D)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. Diane Rice (R)
Rep. Bill Thomas (R)
Rep. Merlin Wolery (R)
Rep. Cindy Younkin (R)

Members Excused: Rep. Jim Shockley, Chairman (R)
Rep. Steven Gallus (D)

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Mary Lou Schmitz, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: **HB 262 - 1-18-01**
Executive Action: **HB 208 - DPAA**
HB 156 - DPAA
HB 223 - DPAA

EXECUTIVE ACTION ON HB 223

Motion: REP. YOUNKIN moved that HB 223 DO PASS. #1

Motion: REP. NOENNIG moved that HB 223 BE AMENDED. #2
EXHIBIT(juh18a10)

Discussion: Rep. Noennig explained his amendment.

{Tape : 2; Side : B; Approx. Time Counter : 15 - 30.1}

Discussion: Reps. Gutsche, Younkin asked Rep. Noennig for further explanation.

Vote: The Noennig amendment, EXHIBIT #10 passed unanimously 18-0

Motion: REP. YOUNKIN moved that HB 223 DO PASS AS AMENDED. #3

Discussion: Reps. Mangan, Noennig, Newman.

Motion: REP. GUTSCHE moved a conceptual amendment to HB 223. #4

{Tape : 3; Side : A; Approx. Time Counter : 0.1 - 11}

Discussion: Rep. Peterson suggested wording for the above amendment. Line 3, based upon the last known address and believed whereabouts of the person. Rep. Mangan suggested language too.

Motion: REP. PETERSON moved a substitute motion to HB 223, language on line 3. #5

Discussion: Reps. Eggers, Noennig, Clark.

Vote: Peterson amendment (#5) passed 18-1 with Rep. Clark voting no.

Discussion: Reps. Wolery, Laszloffy, Noennig, Younkin, Gutsche, Newman, Eggers, Thomas, Shockley, Peterson, Mr. MacMaster

Motion/Vote: REP. NOENNIG moved that HB 223 BE AMENDED to change the (4) to a (1) on lines 20 and 21. #6 Motion carried unanimously 19-0.

Motion: REP. YOUNKIN moved that HB 226 DO PASS AS AMENDED. #3
Motion carried unanimously 19-0.

{Tape : 3; Side : A; Approx. Time Counter : 11 - 29.2}